IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Crl.O.P.No.36249 of 2007 and M.P.Nos. 1 & 2 of 2007

Prof. D.Kannammal .. Petitioner

-Vs.-

Tmt.Renuga Palanisamy .. Respondent

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure calling for the records relating to S T C No.1079 of 2007 on the file of the Judicial Magistrate No.IV, Salem, quash the same.

For Petitioner : Mr.S.Kalyanaraman

O R D E R

The petitioner in the above Criminal Original Petition is the accused in S.T.C.No.1079 of 2007 on the file of the Judicial Magistrate No.IV, Salem and he is facing trial therein for an offence under Section 138 of the Negotiable Instruments Act. The above criminal original petition is filed seeking to quash all further proceedings in S.T.C.No.1079 of 2007 on the ground that the learned Magistrate has not followed the mandatory provisions contained in the Amended Section 202(1) of the Code of Criminal Procedure viz., that the Court shall enquire into the case for the purpose of deciding if there is sufficient ground for proceeding against the accused who is residing outside the area over which the Court exercises jurisdiction had not been complied with.

2. The learned counsel appearing for the petitioner invited the attention of this Court to the Amended Section 202 (1) of the Cr.P.C. which reads as follows:

> "202. Postponement of issue of process.--(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit (and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,) postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding."

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The learned counsel by relying upon the above said provision submitted that, in this case, admittedly, the accused/petitioner herein is residing at Madurai whereas the complaint has been filed at Salem and therefore when the accused is residing outside the area where the Court exercise its jurisdiction, the learned Magistrate is bound to follow the Amended Section 202(1) of the Cr.P.C.

3. The learned counsel by relying on the 'Notes on Clauses' found under Section 19 of the Code of Criminal Procedure (Amendment) Act, 2005 submitted that the Amendment of Section 202(1) requiring the Court to conduct an enquiry in cases where the accused resides outside the jurisdiction of the Court, for the purpose of deciding if there is a sufficient ground for proceeding against the accused, before issuing the process, was made by the Parliament taking note of the fact that false complaints are filed against persons residing at far off places simply to harass them and in order to see that the innocent persons are not harassed by unscrupulous persons. The learned counsel further submitted that it was only to protect the persons residing at far off places from harassment, Parliament in its wisdom had introduced such an amendment, making it obligatory for the Magistrate to conduct an enquiry in a private complaint filed against the accused residing outside the area over which the court exercises jurisdiction. Therefore, the learned counsel submitted that the order of the learned Magistrate taking the case on file by issuance of process to the accused / petitioner herein is illegal and is liable to be quashed.

4. I have carefully considered the above said submission made by the learned counsel appearing for the petitioner.

5. In this case the Docket Order dated 24.08.2007 made by the learned Magistrate reads as follows:

> "Complainant present. Sworn statement recorded. Case records perused. There is a prima facie case made out against the accused u/s 138 and 142 of N I Act. Hence this complaint is taken on file u/s 138 and 142 of N I Act. Issue summons to the accused along with copy of the complaint. Call on 16.11.07."

6. As laid down by the Hon'ble Apex Court in State of West Bengal v. Bijoy Kumar Bose (AIR 1978 SC 188) Section 200 Cr.P.C. comes into play after taking cognizance of an offence. Section 200 Cr.P.C. provides that a Magistrate taking cognizance of an offence on complaint, shall examine the complainant and witnesses present, if any, upon oath and the same shall be reduced to writing and signed by the complainant, witnesses and also by the Magistrate. The object of such examination, is to see that the members of the public are not unnecessarily harassed by false and frivolous accusations. To avoid this, the Magistrate before issuance of process, summon the person / accused of an offence, such satisfaction is for finding out the truth or falsehood of the complaint and then see if the matter in the complaint requires an inquiry by a Court of Law. If the allegations in the complaint and the examination of the complainant prima facie appears sufficient to proceed, the Magistrate is competent to issue the process immediately. Process can be issued only if an offence is made out. It is not obligatory to record the statement of witnesses mentioned in the complaint if the court is satisfied with the statement made by the

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complainant alone. If such witnesses are not kept present by the complainant and the court is satisfied with the statement of the complainant alone, it can straightway issue process.

7. If in the light of the above said observations regarding the scope of Section 200 Cr.P.C., the docket order of the learned Magistrate is considered, it could be seen that the learned Magistrate has recorded the sworn statement of the complainant, pursued the complaint and the documents accompanying the complaint and after being prima facie satisfied that a case under Section 138 of the Negotiable Instruments Act has been made out against the accused, the learned Magistrate had ordered issuance of summons to the accused. When that being so, it has to be seen, as to whether it is further necessary for the learned Magistrate to have proceeded under Section 202(1) of the Cr.P.C. as contended by the learned counsel appearing for the petitioner simply because the accused / petitioner herein is residing outside the jurisdiction of the Court.

8. The amended provision contained under Section 202(1) of the Code makes it mandatory on the part of the learned Magistrate to postpone the issue of process against the accused in a case where the accused is residing beyond the area in which the learned Magistrate exercises its Jurisdiction and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. But in my considered view, the learned Magistrate need not postpone the issue of process against the accused, even if the accused is residing at a place outside his jurisdiction, if allegations in the complaint and examination of the complainant prima facie appears sufficient to proceed and the facts constituting an offence under Section 138 of the Negotiable Instruments Act are disclosed in the complaint.

9. The complaint may some times contain unfounded allegations, thus it is for the Courts to investigate personally and in such investigation of charges, there is no wastage of time of the Court. The purpose of the examination of the complainant is thus to separate the chaff form the grain and issue process in respect of the offence for which prima facie case is made out. If there is no prima facie case or there is no evidence that the accused had committed the offence, Section 200, Cr.P.C. comes into play and the Magistrate has to dismiss the complaint, the new amended provision has been introduced to avoid entertaining of false complaint filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons new provision has been incorporated to make it obligatory upon the Magistrate that before summoning the accused who is residing beyond his jurisdiction, the Magistrate shall enquire into the case or direct investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of finding out whether or not there was sufficient ground for proceeding against the accused.

10. In a complaint filed for an offence under Section 138 of the Negotiable Instruments Act, the question of directing investigation by the police does not arise and similarly entrusting the enquiry to some other person also does not arise. Before filing a complaint for an offence under Section 138 of the Negotiable Instruments Act certain legal requirements as contemplated under Section 138 of the Negotiable Instruments Act have to be fulfilled and in proof of fulfilment of such

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requirements, necessary documents have also to be filed along with the complaint. Only on a perusal of the allegations contained in the complaint and the documents accompanying the complaint and on being prima facie satisfied with the establishment of a prima facie case under Section 138 of the Act, the Court orders issue of process.

11. The dishonoured cheque should be produced before the Court, the copy of the legal notice to be issued by the drawee of the cheque to the drawer demanding payment due under the cheque has to be produced, the acknowledgement for service of such notice is required to be filed and the reply, if any, received from the drawer is required to be filed and as such the question of filing false complaint to harass innocent persons by unscrupulous persons does not normally happen. Therefore, in my considered view the amended provision contained under Section 202(1) of the Cr.P.C. may not apply in respect of cases filed for an offence under Section 138 of the Negotiable Instruments Act.

12. In other type of complaints, there may be mere allegations in the complaint and such complaints may not be accompanied with any supporting documents and such complaints may be filed against persons living beyond the jurisdiction of the Court before which the complaint is filed and in such cases, there may be possibility of unscrupulous persons filing false complaint against innocent persons and therefore in such cases for finding out whether or not there is sufficient ground for proceedings against the accused, a mandatory duty is cast upon the Court to postpone the issue of process against the accused and to enquire into the case by the Magistrate himself or direct investigation to be made by a police officer or by such other person as he thinks fit.

13. For the above said reasons, I am unable to accept the contentions put forth by the Learned Counsel appearing for the petitioner. A perusal of the allegation contained in the complaint prima facie reveals commission of an offence under Section 138 of the Negotiable Instruments Act and as such the proceedings in S.T.C. No.1079 of 2007 cannot be quashed and therefore the above criminal original petition fails and the same is dismissed. Consequently, the connected M.Ps. are closed.

kk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.IV, Salem.

2. -do- Thro' The Chief Judicial Magistrate, Salem.

+1 cc to Mr.S.Kalyanaraman, Advocate Sr.No.74854.

RSV(CO)
DCP/4.1

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